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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

DZ RESERVE, and CAIN MAXWELL (d/b/a  
MAX MARTIALIS), individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. 3:18-cv-04978 JD

**DECLARATION OF MELANIE M.  
BLUNSCHI IN SUPPORT OF  
FACEBOOK, INC.'S  
ADMINISTRATIVE MOTION FOR AN  
EVIDENTIARY HEARING ON THE  
MOTION FOR CLASS  
CERTIFICATION**

Hon. James Donato

1 I, Melanie M. Blunschi, declare as follows:

2 1. I am a partner with the law firm Latham & Watkins LLP and am counsel for  
3 Defendant Facebook, Inc. ("Facebook") in the above referenced litigation. I am licensed to  
4 practice law in the State of California and am admitted to practice before this Court. I have  
5 personal knowledge of the facts set forth herein, and if called upon to do so could competently  
6 testify as follows.

7 2. Pursuant to Civil Local Rule 7-11(a), I submit this declaration in support of  
8 Facebook's Administrative Motion for an Evidentiary Hearing on Plaintiffs' Motion for Class  
9 Certification. As explained herein and in the correspondence attached as **Exhibit 1**, the parties  
10 were unable to resolve this matter through stipulation.

11 3. On May 3, 2021, following Plaintiffs' filing of their motion for class certification,  
12 Facebook contacted Plaintiffs to suggest that the parties reach an agreement and submit a  
13 stipulation to the Court proposing that the Court hold an evidentiary hearing on Plaintiffs' motion  
14 for class certification and the parties' competing evidence related to Federal Rule of Civil  
15 Procedure Rule 23.

16 4. Over the three weeks since my initial email, the parties have exchanged further  
17 emails discussing Facebook's suggestion. Facebook's position is that three of its four rebuttal  
18 experts should testify (Drs. Catherine Tucker, Steven Tadelis, and David Reibstein).

19 5. As the Parties appeared unable to reach agreement by email, I asked on May 19,  
20 20, and 21 for Plaintiffs to meet and confer with Facebook by phone. Plaintiffs' counsel were  
21 unable to confer on those days, but as a courtesy and in hopes of reaching agreement, we agreed  
22 to wait until today (Monday, May 24) to speak. When setting the call for today, I emphasized the  
23 need to reach resolution on whether the Parties agreed there should be an evidentiary hearing of  
24 some type, given the fast-approaching hearing date.

25 6. When I spoke with Plaintiffs' counsel this morning, they did not give any indication  
26 of whether they would agree to an evidentiary hearing but asked me to formalize the proposal from  
27 my emails and the telephone call into a proposed submission to the Court. I shared a proposed  
28

1 stipulation with Plaintiffs earlier this afternoon and again asked Plaintiffs' position on whether  
2 they would agree to an evidentiary hearing of any type. I have exchanged several more emails  
3 with Plaintiffs' counsel since then, but they have been unwilling to state whether they agree that  
4 some type of evidentiary hearing is appropriate.

5 7. A true and correct copy of the email chain reflecting the parties' discussions is  
6 attached hereto as **Exhibit 1**.

7 8. An evidentiary hearing (whether in a traditional or hot tub format) is appropriate at  
8 this time given the competing expert evidence submitted in connection with Plaintiffs' motion for  
9 class certification, and Facebook's pending motions to exclude two of Plaintiffs' experts in  
10 connection with Plaintiffs' motion for class certification. Though Facebook would prefer to  
11 present this as a joint proposal, the parties have not been able to reach agreement in the three weeks  
12 since we began these discussions. In light of the impending June 10 hearing date, Facebook  
13 believes it cannot wait any longer to make this proposal to the Court.

14  
15 I declare under penalty of perjury that the foregoing is true and correct, and that I executed  
16 this Declaration on May 24, 2021, in Piedmont, California.

17  
18 By: /s/ Melanie M. Blunski  
19 Melanie M. Blunski  
20 *Attorney for Defendant Facebook, Inc.*  
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**ATTORNEY ATTESTATION**

I, Elizabeth L. Deeley, attest pursuant to L.R. Civ. Rule 5-1(i)(3), that concurrence in the filing of this Declaration of Melanie M. Blunschi in Support of Facebook, Inc.'s Administrative Motion for an Evidentiary Hearing on the Motion for Class Certification has been obtained from the signatory. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of May 2021, in San Francisco, California.

/s/ Elizabeth L. Deeley  
Elizabeth L. Deeley  
of LATHAM & WATKINS LLP